Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH W. OLMSTEAD,

Petitioner,

v.

WALTER INDUSTRIES, INC.,
d.b.a. Mid State Homes, Inc.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petition respectfully submitted by:
Joseph W. Olmstead, *pro se*
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36 pp

QUESTIONS PRESENTED FOR REVIEW

1. What constitutes a valid notice of appeal filed by a *pro se* party to seek review of issues disposed of in the District Court in separate non-final summary judgment orders and fully briefed in an initial brief and reply brief filed in the United States Courts of Appeals?

2. What level of privacy is afforded medical records, when requested by an employer to be submitted and stored in personnel files, and should those records be accessible by persons without medical training or need for such data, such as payroll clerks and other employees?

3. Should an employment action be dismissed with prejudice with no type of relief available if the record identifies material issues of fact, as presented in timely submissions of sworn testimony, depositions and other documents?

LIST OF PARTIES TO THE ACTION

Joseph W. Olmstead, *pro se*, Petitioner

Walter Industries, Inc., Respondent

Mid State Homes, Inc., Subsidiary of Walter Industries, Inc., Respondent

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PGA Tour, Inc. v. Martin, 532 U.S._(2001), page 21.

Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000), page 16.

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Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit, entered on October 24, 2001.

Appendix B - Opinion of the United States District Court for the Middle District of Florida, entered on February 26, 2001.

Appendix C - Order of the United States Court of Appeals for the Eleventh Circuit denying petition for rehearing, entered on November 28, 2001.

Appendix D - Order of the United States Court of Appeals for the Eleventh Circuit granting stay and stay of issuance of mandate, entered on December 27, 2001.

OPINIONS BELOW

The opinion of the United States Court of Appeals, entered on October 24, 2001, appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court, entered on February 26, 2001, appears at Appendix B to the petition and is unpublished.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided this case was October 24, 2001.

A timely petition for rehearing was denied by the United States Court of Appeals on November 28, 2001; and a copy of the order denying rehearing appears at Appendix C.

A motion for stay and stay of the issuance of the mandate was granted by the United States Court of Appeals on December 27, 2001; and a copy of the order appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

I certify that all jurisdictional requirements, including payment of filing fees, preparation of documents in the form prescribed by the Rules of this Court, service to all parties (and filing of proof with the Clerk), have been timely completed and in good faith.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This is a case seeking relief provided by the Americans with Disabilities Act, 42 U.S.C. 12112(a) ("the ADA"), which provides, in pertinent part with respect to this petition:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Section 1630.4 and Section 1630.12 of 29 Code of Federal Regulations (Equal Employment Opportunity commission), Chapter XIV (7-1-98 Edition) provide, in pertinent part:

> Sec. 1630.4 - Discrimination prohibited
>
> It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:
>
> (a) Recruitment, advertising, and job application procedures;
>
> (b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff,

termination, right of return from layoff, and rehiring; ....
(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity; ...; and

(i) Any other term, condition, or privilege of employment."

Sec. 1630.12 - Retaliation and coercion

(a) *Retaliation.* It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part."

Sections 1630.4 and 1630.12 of 29 CFR, CH. XIV.

BRIEF STATEMENT OF THE CASE

This is an action seeking relief provided in the Americans with Disabilities Act, 42 U.S.C. 12112, *et seq.* with respect to issues arising out of an employment relationship between the parties: Joseph W. Olmstead, proceeding *pro se* ("petitioner") and Walter Industries, Inc., d.b.a. Mid State Homes, Inc. ("respondent"). [1]

As was included in the Statement of Jurisdiction (VI) in the initial brief timely filed in the United States Court of Appeals for the Eleventh Circuit, petitioner stated:

> "Pursuant to 11th Cir.R.28-1(g) and F.R.A.P. R. 28(a), Employee states:
>
> (i) Jurisdiction was conferred to the United States District Court for the Middle District of Florida, Tampa Division, by 28 U.S.C. 1331, which provides: "The district courts shall have original jurisdiction of all civil actions

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[1] Walter Industries, Inc. employs approximately 8,100 persons. Mid State Homes, Inc. is a subsidiary which employs more than 30 persons and shares offices and administrative functions with other departments and subsidiaries at the corporate offices of Walter Industries, Inc., where Petitioner worked. Employee identification badges, personnel handbooks, telephone listings and other materials reflect the employer as "Walter Industries, Inc."

arising under the Constitution, laws or treaties of the United States." A Complaint (R-1-1) was filed in the District Court on March 31, 1999 pursuant to notice of dismissal and notice of rights served by the Equal Employment Opportunity Commission[2] on December 31, 1998.

(ii) The United States Court of Appeals for the Eleventh Circuit has jurisdiction pursuant to 28 U.S.C., Section 1291, which provides: "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States...". A Final Order (R-5-141) was entered on February 26, 2001. A notice of appeal (R-5-143) was filed and served on February 28, 2001. Employee

---

2 The Equal Employment Opportunity Commission (EEOC) conferred jurisdiction to the City of Tampa Human Rights Office (THRO) in September 1997. In September 1997 and December 1997, THRO invited the parties to attempt to resolve the issues (with the exception of privacy of medical records, as THRO did not have jurisdiction) through informal methods, which respondent declined. In January 1998, THRO administratively closed the file and referred the matter to the EEOC's District Office; and a right-to-sue notice was served on December 31, 1998. (R-1-1).

certifies that all other jurisdictional requirements have been met, including with respect to payment of filing fees and costs (R-5-143; R-5-146); and (a) this appeal is from a final order that disposes of all claims with respect to the parties in this action."

The notice of appeal (R-5-143) filed and served in this action on February 28, 2001 stated as follows:

Notice of Appeal

Notice is hereby given that Joseph W. Olmstead, Plaintiff, proceeding *pro se*, in the above named case, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from an Order (Dkt. #141) dismissing the amended complaint and denying all pending motions and requests for relief, including with respect to alleged interference of privacy of medical and personal information, entered in this action on February 26, 2001.

Dated this 28th day of February, 2001.

/s
Joseph W. Olmstead, *pro se*"

With respect to the relief sought in the United States Court of Appeals, petitioner summarized

the issues and fully briefed each issue, pointing to portions of the record, including deposition testimony, affidavits and other materials permitted by a Court Order[3] entered on August 24, 2000, and citations of authorities in support of the relief requested; and those issues were presented as follows in Section VII of the initial brief:

> "1. The issues presented for review in this employment case concern rights secured under the Americans with Disabilities Act, 42 U.S.C. 12112, *et seq.* regarding benefits and privileges with respect to Employer's Group Long Term Disability Benefits Plan, including regarding an employee certified by a medical doctor to return to active service (R-4-114-2).
>
> 2. This case also presents issues concerning confidentiality of medical

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[3] On June 2, 2000, an Order (R-3-68) was entered by the District Court, which granted in part and denied in part Defendant's Motion for Summary Judgment. After entry of this Order, the case was transferred in the District Court on two occasions. The Court Order allowing discovery on post-employment issues was entered by the Court on August 24, 2000. As this Court requires that a *concise* statement of the proceedings be included in the body of the petition, petitioner has not restated the dates of each proceeding in the District Court.

records furnished to Employer and Employer's Agents (R-5-131-unnumbered pages 4-6); and utilization, dissemination and transmission of protected records, including physician office notes (R-3-74-2; R-3-74-8).

3. This case also presents issues concerning alleged retaliation, as Employee alleges that after rights were exercised, Employer's characterizations of Employee's performance and work habits changed (from "Excellent performance" and comments of "...good attitude and dependable" to other unfounded derogatory characterizations which remain a material issue of fact) (R-3-74-2; R-1-21; R-3-71-Ex.)."

On page xiv of the Response Brief, respondent, respondent briefed one issue (#1 above) and listed the Statement of the Issue as follows:

"STATEMENT OF THE ISSUE

Whether Walter Industries has discriminated against the Plaintiff in violation of the Americans with Disabilities Act, 42 U.S.C. 12112, *et seq.* (the "ADA") with respect to its group benefits plan."

In the Opinion of the United States Court of Appeals issued on October 24, 2001 (Appendix A), the Court of Appeals reviewed the three

issues and set forth the Court's Decision regarding the issues, including with respect to the alleged retaliation, in which the Court stated that the retaliation claim would not be reviewed on the merits, as the claim was not set forth in the notice of appeal.

REASONS FOR GRANTING THE WRIT

A. General Requirements of this Court

Petitioner is mindful that review on a writ of certiorari is not a matter of right, but of judicial discretion and that a petition must present substantial questions. Supreme Court Rule 10.

As petitioner has requested review in part with respect to application of the law among Circuit Courts of Appeals, Plaintiff cites to *Braxton v. U.S.*, 111 S.Ct. 1854, 1857 (1991):

> "A principal purpose for which we use or certiorari jurisdiction, and the reason we granted certiorari in the present case, is to resolve conflicts among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law. See this Court's Rule 10.1. With respect to federal law apart from the Constitution, we are not the sole body that could eliminate such conflicts, at least as far as their continuation into the future is concerned. Obviously, Congress itself can eliminate a conflict concerning a

statutory provision by making a clarifying amendment to the statute, and agencies can do the same with respect to regulations. Ordinarily, however, we regard the task as initially and primarily ours."

B. Reasons why review by this Court of this case raises issues of public importance

While this is an employment action which concerns two parties, the issues raised in this case concern issues which could reasonably be considered of national importance, including (a) with respect to medical records, (b) redress for alleged retaliatory acts or omissions after exercising in good faith rights secured by Federal law, and (c) with respect to procedures which must be completed by a *pro se* litigant seeking relief in good faith.

C. Statement that petitioner has standing and meets the statutory requirements

As petitioner is a person living with HIV Disease, and as a record was established in both the District Court and subsequent proceedings in the Court of Appeals, petitioner cites to this Court's Decision in the matter of *v. Abbott*, 118 S.Ct. 2196, 2204, 2207 (1998):

"Respondent's HIV infection is a physical impairment....OLC [Office of Legal Counsel of the Department of Justice]

> determined ... HIV was a physical impairment under the Rehabilitation Act because it constituted a 'physiological disorder or condition affecting the hemic and lymphatic systems."
>
> "HIV infection satisfies the statutory and regulatory definition of a physical impairment during every stage of the disease."

D. Statement of award of summary judgment on claims pertaining to Group Plan and alleged interference of privacy of medical information

While petitioner is mindful that the purpose of the summary judgment rule is to save time and costs to the Court and parties, as petitioner proffered testimony of a former payroll clerk, which indicated that detailed medical records were stored in personnel files and accessible by employees such as payroll clerks and others, (including those with no medical training or need for such information), and as respondent allegedly used other criteria and procedures with respect to petitioner's request to be considered for *vacant* positions and refused to correct its records regarding petitioner's employment record and characterizations of the same which changed after rights were exercised and allegedly caused pecuniary and non-pecuniary damages, petitioner respectfully states that this issue should have been allowed to be presented at a trial. In support, petitioner cites to the following cases:

"Thus, while a plaintiff must 'set forth' by affidavit or other 'specific facts,' to survive a motion for summary judgment, Fed. Rule Civ. Proc. 56(e), and must ultimately support any contested facts with evidence adduced at trial, '[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" (citations omitted). *Bennett v. Spear*, 117 S.Ct. 1154, 1164 (1997).

"In attempting to meet his or her ultimate burden of persuading the trier of fact that defendant intentionally discriminated, employment discrimination plaintiff must, once defendant employer produces sufficient explanation to support a nondiscriminatory explanation for its decision, be afforded the opportunity to prove by a preponderance of evidence that the legitimate reasons offered by defendant were not its true reason, but were a pretext for discrimination; that is, plaintiff may attempt to establish that he was the victim of intentional discrimination by showing that employer's proffered explanation is unworthy of credence." *Reeves v. Sanderson Plumbing Products, Inc.*, 120

S.Ct. 2097, 2106-08 (2000).

With respect to petitioner's request to be considered for *vacant* positions consistent with respondent's group plan, petitioner cites to the following case:

> "A benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free under the employment contract, simply not to provide the benefit at all." *Hishon v. King & Spalding*, 104 S.Ct. 2228, 2233-34 (1984).

The Eleventh Circuit has defined an adverse employment action as follows:

> "An adverse employment action is an ultimate employment decision, such as discharge or failure to hire, or other conduct that 'alters the employee's compensation, terms, conditions or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee". *Gupta v. Florida Bd. of Regents*, 212 F.2d 571, 587 (11th Circ. 2000).

> With respect to the issue of alleged interference of privacy of medical information, there appears to be some difference between the United States

Courts of Appeals for the Eleventh Circuit and Ninth Circuit, as the Eleventh Circuit stated, in part, that "There is no provision of the ADA granting Olmstead the privacy he claims." Opinion, Appendix A.

"ADA imposes no restriction on scope of employee entrance examinations, but only guarantees confidentiality of information gathered and restricts use to which employer may put the information." *Norman-Bloodsaw v. Lawrence Berkely Laboratory*, 135 F.3d 1260 (9th Circ. 1998).

With respect to the Opinion of the United States Court of Appeals for the Eleventh Circuit which did not review the retaliation claim on the merits due to a defect in the notice of appeal, while petitioner is aware that noticing and all other requirements are jurisdictional in nature, petitioner respectfully states that defect in the notice could be construed as non-fatal, as the appeal was from a final order, the respondent was not prejudiced and had an opportunity to brief the claim. In support, petitioner cites with favor to a Decision of this Court and an Opinion of the United States Court of Appeals for the Eleventh Circuit:

"An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party

whose intent to appeal is otherwise clear from the notice." Imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court. See, *e.g., Smith* v. *Barry*, 245, 248–249. Pp. 8–10." The case was reversed and remanded. *Becker v. Montgomery, Attorney General of Ohio, et al.* (Case No. 00-6374), decided May 29, 2001.

In *Foman v. Davis*, 83 S.Ct. 227 (1962), this Court stated, in part that "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. " at 230.

"Absent direct evidence of discrimination, a plaintiff in a retaliation case must establish prima facie case by showing that (1) the plaintiff engaged in statutorily protected activity; (2) the employer took an adverse employment action against him; and (3) there is a casual connection between the protected activity and the adverse action....In order to state a retaliation claim, the plaintiff need only show that he had a 'reasonable belief' that an unlawful employment practice was that the employer actually engaged in an unlawful employment

practice." *Berman v. Orkin Exterminating Co., Inc.*, 160 F.3d 697, 701-02 (11th Circ. 1998).

E. Information regarding cases and application of the ADA to which relief is sought

As this is an action seeking relief provided by the Americans with Disabilities Act ("the ADA"), it would appear reasonable to note that this Court has recently decided a case seeking relief under the ADA. In this Court's Decision of January 8, 2002, in the matter of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, U.S. S.Ct. Case No. 00-1089, the Court set forth the text of the law and various requirements in this regard, including the following:

> "The ADA requires covered entities, including private employers, to provide "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship." 42 U.S.C. 12112(b)(5)(A)(1994 ed); see also 12111(2). ("The term 'covered entity' means an employer, employment agency, labor organization, or joint labor-management committee.") The Act defines a "qualified individual with a disability" as "an individual with a

disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 12111(8). In turn, a "disability" is:

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

"(B) a record of such impairment; or

"(C) being regarded as having such an impairment."
12102(2)."

Section II of Opinion in the matter of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams,* U.S. S.Ct. Case No. 00-1089.

As was included in the Reply Brief of Appellant, in this Court's Opinion in the matter of *PGA Tour, Inc. v. Martin,* 532 U.S.___(2001)(Slip Opinion, pages 12 and 13), the following was set forth:

"Congress enacted the ADA in 1990 to remedy widespread discrimination against disabled individuals. In studying the need for such legislation, Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with

> disabilities continue to be a serious and pervasive social problem." 42 U.S.C. 12101(a)(2);
> see 12101(a)(3)('[D]iscrimination against individuals with disabilities persists in such critical areas as employment, ... Congress noted that the many forms of discrimination takes include 'outright intentional exclusion' as well as 'failure to make modifications to existing facilities and practices.' 12101(a)(5).

PGA Tour, Inc. v. Martin, 532 U.S.___(2001)(Slip Opinion, pages 12 and 13.

F. Pro Se pleadings

As petitioner has been proceeding in the United States District Court and United States Court of Appeals without assistance of counsel, it would not appear unreasonable to respectfully request some leniency in the review of this petition and relief provided by Federal law, and in support, petitioner cites to the following:

"A *pro se* complaint, however inartfully pleaded, must be held to 'less stringent standards than formal pleadings drafted by lawyers' and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

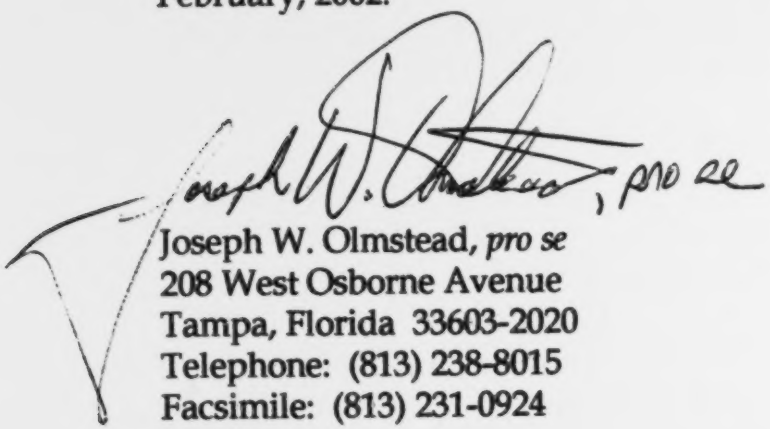
Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct.

594, 30 L.Ed.2d 652 (1972), quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

CONCLUSION

Petitioner respectfully requests this Court grant this petition for a writ of certiorari.

RESPECTFULLY SUBMITTED this 19th day of February, 2002.



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Petitioner

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-11182
Non-Argument Calendar

D.C. Docket No. 99-00746-CV-T-30-EAJ

JOSEPH W. OLMSTEAD,

Plaintiff-Appellant,

versus

WALTER INDUSTRIES, INC., d.b.a. Mid State Homes, Inc.

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(October 24, 2001)

Before TJOFLAT, BLACK and KRAVITCH, Circuit Judges.

PER CURIAM:

Joseph W. Olmstead appeals the district court's

order dismissing his claims against Walter Industries, Inc. under the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq. Olmstead contends that the district court erred in dismissing his claims because, according to Olmstead, Walter Industries, his former employer, violated his rights under the ADA in three ways: (1) by denying him the benefit of returning to work under its long term disability plan; (2) by violating his privacy rights; and (3) by retaliating against him for filing a claim with the Equal Employment Opportunity Commission. Upon review of the record, we find no reversible error.

Olmstead was employed as a data processor by Walter Industries for approximately eight years before he was diagnosed with AIDS in 1995. He took paid leave for one month, and then was placed on leave without pay. He contained to receive long term disability benefits. Two years later, while Olmstead was still on leave, Walter Industries changed his status from "active" to "terminated", although this change had no effect on his benefits. Thereafter, Olmstead filed a complaint against Walter Industries under the ADA. Later, he filed an amended complaint and various motions related to those claims. The district court, in two separate summary judgment orders and an order of dismissal, dismissed all of the claims and motions. Olmstead now appeals the dismissal of three of his claims.

Olmstead's first argument is that the trial court erred by granting summary judgment to Walter

Industries on the issue of Olmstead's right to return to work. [2] Olmstead contends that his long term disability plan grants him the right to return to work whenever he is able, and that he was discriminated against when Walter Industries denied him that right. A district court's grant of summary judgment is reviewed de novo, applying the same standards utilized by the district court. SEC v. Adler, 137 F.3d 1325, 1332 (11th Circ. 1998). The moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

To establish a prima facie ADA violation, Olmstead must demonstrate that he is "a qualified individual with a disability" and that he was "discriminated against because of that disability." Durley v. APAC, Inc., 236 F.3d 651,

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[2] In its order dismissing the case, the district court did not indicate whether it was ruling on Walter Industries' motion to dismiss or on its motion for summary judgment. By relying on the evidence submitted by Walter Industries, however, the district court must have been granting summary judgment. See Fed. R. Civ. P. 12(b) (if district court considers matters outside the pleadings in ruling on a motion to dismiss for failure to state a claim, then "the motion shall be treated as one for summary judgment ....").

657 (11th Circ. 2000). A qualified individual is one who can perform the essential functions of his job "with or without reasonable accommodation." 42 U.S.C. 12111(8). Olmstead has proffered no evidence that he is a "qualified individual" who is capable of returning to work with or without reasonable accommodation. Allowing an employee to take an indefinite leave of absence is not a reasonable accommodation. See Ducket v. Dunlop Tire Corp., 120 F.3d 1222, 1226 (11th Circ. 1997). Furthermore, the long term disability benefits plan does not grant Olmstead a right to return to work whenever he is able. We agree with the district court that, as a matter of law, Walter Industries did not violate the ADA by changing Olmstead's status from "active" to "terminated".

Olmstead also argues that the trial court erred by granting summary judgment to Walter Industries on his claims for interference with privacy. These claims stem from Olmstead's allegation that his medical records were stored in a location whey they could be seen by persons with no need or entitlement to see them. The district court granted summary judgment on these privacy claims as part of its "Order Denying Plaintiff's Motion for Reconsideration", which Olmstead has not appealed. Instead, Olmstead has appealed the district court's denial of his motions for relief from the summary judgment. The denial of a motion for relief from judgment is reviewed for abuse of discretion. Davis v. Fla. Power & Light Co., 205 F.3d 1301, 1304 n.4 (11th Cir.) cert. denied, 531 U.S. 927 (2000). There is no

provision of the ADA granting Olmstead the privacy he claims. Additionally, Olmstead has not pointed to any evidence that indicates that his medical records were seen by anyone without an employment-related need. The district court did not abuse its discretion in dismissing these claims.

Finally, Olmstead appeals the district court's granting of summary judgment to Walter Industries on his claim that he was retaliated against for asserting his rights under the ADA. This claim was not set out in Olmstead's notice of appeal. This court only has jurisdiction to review judgments specified in an appellant's notice of appeal. See Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1374-75 (11th Cir. 1983). Accordingly, we will not review the retaliation claim on the merits.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH W. OLMSTEAD,

Plaintiff.

v.

Case No. 8:99-cv-746-T-30C

WALTER INDUSTRIES, INC.,

Defendant.

ORDER DISMISSING AMENDED COMPLAINT

This cause came on for consideration of the Defendant's Motion to Dismiss Amended Complaint (Dkt. #118). The Court has reviewed the record in this case, including Plaintiff's opposition to Defendant's Motion, and heard oral arguments from the parties on February 22, 2001, and finds that Defendant's Motion is granted with prejudice for the reasons stated in open Court. The Court has carefully reviewed Plaintiff's claims and has found that the "Rehabilitation provision" on which Plaintiff relies does not require Defendant to re-hire Plaintiff. Likewise, the comments of Michael McDonald to the St. Petersburg Times do not create any contractual right between Plaintiff and Defendant.

APPENDIX B

The Court has also reviewed Plaintiff's remaining motions (Dkt. # 97, 120, 124, 128, 130, 131, 137, & 139), and finds that Plaintiff has not set forth any argument on which he is entitled to relief. Accordingly, it is hereby

ORDERED and ADJUDGED that

1. Defendant's motion to Dismiss Amended Complaint (Dkt. # 188) is GRANTED. Plaintiff's Amended Complaint is DISMISSED with prejudice.

2. Plaintiff's remaining motions (Dkt. -#97, 120, 124, 128, 130, 131, 137, & 139) are DENIED.

3. The Clerk is directed to close this file and deny all pending motions as moot.

DONE and **ORDERED** in Tampa, Florida on February 26, 2001.

/s
JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties

APPENDIX C

[NOV 28 2001]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-11182

JOSEPH W. OLMSTEAD,

Plaintiff-Appellant,

versus

WALTER INDUSTRIES, INC.,
d.b.a. Mid State Homes, Inc.,

Defendant-Appellee.

On Appeal from the United States District Court
for the
Middle District of Florida

Before TJOFLAT, BLACK and KRAVITCH,
Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

APPENDIX C

ENTERED FOR THE COURT:

/s Phyllis Kravitch

UNITED STATES CIRCUIT JUDGE

Filed Stamp: U.S. Court of Appeals Eleventh Circuit NOV 28 2001 Thomas K. Kahn, Clerk

ORD-41

APPENDIX D

[DEC 27 2001]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-11182

JOSEPH W. OLMSTEAD,

Plaintiff-Appellant,

versus

WALTER INDUSTRIES, INC.,
d.b.a. Mid State Homes, Inc.,

Defendant-Appellee.

On Appeal from the United States District Court
for the
Middle District of Florida

ORDER:

( ) The motion of Appellant, Olmstead, for (X) stay () recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(X) The motion of Appellant, Olmstead, for (X) stay () recall and stay of the issuance of the

mandate pending petition for writ of certiorari is GRANTED to and including Feb.20, 2002, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of Appellant, Olmstead, for a further stay of the issuance of the mandate is GRANTED to and including _____, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of Appellant, Olmstead, for a further stay of the issuance of the mandate is DENIED.

/s Phyllis Kravitch

_____

UNITED STATES CIRCUIT JUDGE

ORD-45

Filed Stamp: U.S. Court of Appeals Eleventh Circuit DEC 27 2001 Thomas K. Kahn, Clerk